

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23077
Docket Number MW-23225

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Laborer Donny Ray Williams for alleged 'insubordination' was without just and sufficient cause and on the basis of unproven charges (System File MW-79-8-CB).

(2) Laborer Donny Ray Williams shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On December 7, 1978, Mr. D. R. Williams, the claimant, was dismissed from the service of the Carrier for insubordination when he failed to follow the instructions of his foreman. The Carrier charged claimant with violation of Rule 801 of Rules and Regulations for the Government of Maintenance of Way and Engineering Department Employees, reading in part as follows:

"Employees will not be retained in service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious . . ."

Claimant requested and was granted a hearing under the rules of the applicable Agreement. The hearing was held, after one postponement, on December 19, 1978. Copy of the transcript of the hearing was made a part of the record. Claimant was represented at the hearing by a representative of his choice as prescribed in the Agreement. He had two witnesses testify in his behalf. A careful study of the transcript reveals claimant received a fair and impartial hearing.

The question before this Board is whether claimant was insubordinate and quarrelsome when he refused to respond and return to work upon the first instructions from his foremen. Claimant was part of a gang working on a switch in the Pine Bluff gravity yard when it started to rain, he, along with others, sought shelter. Apparently when the rain subsided the foreman gave instructions to return to work and claimant refused to do so until after he was ordered to do so the second time. When he did return an argument ensued and there was a question

as to whether claimant threatened the foreman with a spike maul.

X-1
As a result of these developments the foreman ordered claimant to leave the work scene and return to the tool house where he would receive a dismissal letter. Claimant refused to leave voluntarily requiring the foreman to obtain the assistance of the special agent to remove him from the property. While several witnesses, including the claimant's, testified they observed an argument taking place between claimant and the foreman, none, other than the foreman, testified that claimant threatened the foreman. Claimant contended that he was singled out by the foreman as there were others under shelter from the rain at the time he was ordered out to work. This was not refuted by the Carrier.

C-2
The Board finds the evidence clear that claimant was insubordinate in that he failed to promptly follow the instructions of his foreman and when he did so he was quarrelsome and argumentative by his own testimony. We find him guilty of the charges.

C-3
Insubordination is a serious offense, however, in view of the entire record, we feel claimant should be given another chance. We, therefore, award his reinstatement with full seniority and all other rights unimpaired, but without back pay, and, with the further condition that this award be made a part of his personal record.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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That the discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1980.